

## Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 L-03 TRSE-00 EB-07 DHA-02 AGR-05 CEA-01

CIAE-00 COME-00 DODE-00 FRB-03 H-02 INR-07 INT-05

LAB-04 NSAE-00 NSC-05 PA-01 AID-05 CIEP-01 SS-15

ITC-01 PRS-01 SP-02 OMB-01 IO-13 NSCE-00 SSO-00

USIE-00 INRE-00 /095 W

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FM AMEMBASSY LIMA

TO USUN NEW YORK NIACT IMMEDIATE 743

SECSTATE WASHDC IMMEDIATE 9844

C O N F I D E N T I A L LIMA 3683

USUN FOR UNDER SECRETARY MAW

WASHINGTON FOR ARA - MR. WILLIAM ROGERS; L - MR. LEIGH;

TREASURY - MR. BUSHNELL; EB - MR. GREENWALD

EO 11652: GDS

TAGS: EIND, EINV, EMIN, PFOR, PE

SUBJ: MARCONA

1. SUMMARY: AS OF MID-DAY WEDNESDAY, MAJOR ISSUES OF DISAGREEMENT INCLUDED TREATMENT OF \$3.6 MILLION IN INTER-COMPANY ACCOUNTS, INCLUSION/EXCLUSION OF ORE PURCHASED BY MARCONA IN TRANSPORTATION AGREEMENT, DIFFERENCES OVER DELIVERY SCHEDULES FOR ORE WHICH MARCONA WILL PURCHASE, AND CONTENT OF INTERGOVERNMENTAL AGREEMENT. U.S. GROUP AND MARCONA REPRESENTATIVES WILL MEET WEDNESDAY AFTERNOON WITH MINPECO TO DISCUSS ORE SALES AGREEMENTS. HOWEVER, US GROUP BELIEVES FURTHER PROGRESS ON INTERGOVERNMENTAL AGREEMENT AND TWO CONTRACTS DEPENDS ON RESOLUTION OF KEY ISSUES NOTED ABOVE, AND THAT SUCH RESOLUTION NOT POSSIBLE ON TECHNICAL LEVEL. WE RECOMMEND, THEREFORE, THAT  
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MR. MAW ARRIVE HERE AS PLANNED LATE THURSDAY, PRE-

PARED TO REMAIN FIVE-SIX DAYS. (GOP NOW SEEMS PREPARED TO TAKE NECESSARY STEPS--CONCLUSION OF CONTRACTS, PASSAGE OF DECREE LAW, ETC.--TO PERMIT SETTLEMENT ON/ABOUT APRIL 28.) GOP (DE LA PUENTE) ALSO RESPONDED VERY POSITIVELY TO IDEA OF DR. FISHLOW'S RETURNING TO LIMA LATE THIS WEEK FOR FINAL PERIOD OF NEGOTIATIONS AND SIGNING OF AGREEMENT. END SUMMARY.

2. DISCUSSIONS WITH COMMISSION ON INTERGOVERNMENTAL AGREEMENT REVEAL BASIC PROBLEM; GOP WANTS AGREEMENT IN WHICH ONLY PAYMENT OF \$33 MILLION RECOGNIZED AS CONSTITUTING COMPENSATION, WHILE USG BELIEVES THAT SETTLEMENT CONSISTS OF PACKAGE INCLUDING ONGOING RELATIONSHIPS (AND HAS INSISTED ON REFERENCES TO SAME). WE HAVE DONE SOME INFORMAL REDRAFTING, BUT HAVE NOT BEEN ABLE TO RESOLVE THIS DIFFERENCE. GOP HAS NOW PROPOSED THAT WE NOT HAVE AN INTERGOVERNMENTAL AGREEMENT, BUT RELY SIMPLY ON A JOINT COMMUNIQUE. FORMAL ACTIONS OF GOP WOULD THEN BE PAYMENT OF \$33 MILLION IN CASH, SIGNING OF TWO CONTRACTS WITH MARCONA, PUBLICATION OF COMMUNIQUE, PLUS PROMULGATION OF DECREE LAW BY COUNCIL OF MINISTERS THAT WOULD AUTHORIZE BOTH THE \$33 MILLION PAYMENT AND SIGNATURE OF THE CONTRACTS. U.S. GROUP HAS POINTED OUT IMPORTANCE OF ASSURING THAT SETTLEMENT RESOLVES MARCONA MATTER AS MATTER OF DOMESTIC AND INTERNATIONAL LAW, AND USEFULNESS OF AGREEMENT AS VEHICLE FOR QUITCLAIM. WE INTEND TO CONTINUE PRESSING FOR INTERGOVERNMENTAL AGREEMENT, IN PART BECAUSE JOINT COMMUNIQUE APPEARS TO RAISE SAME BASIC PROBLEM AS MORE FORMAL INTERGOVERNMENTAL AGREEMENT.

3. CONTINUED DISCUSSION OF OTHER ISSUES INDICATES THAT \$3.6 MILLION MATTER IS MOST SERIOUS OF SEVERAL BASIC DIFFERENCES THAT HAVE EMERGED. COMMISSION HAS CONCEDED THAT MINISTERS INTENDED THAT MARCONA RECEIVE \$12 MILLION (NOT \$8 MILLION OR INDEFINITE FIGURE) IN COMPENSATION FROM TRANSPORTATION AGREEMENT, BUT NOW ARGUE THAT THIS MAY REQUIRE AN EXTENSION OF MORE THAN A YEAR. THEY STILL CONTEND THAT 3.1 MILLION TONS OF PELLETS THAT MARCONA IS TO PURCHASE FOB UNDER ORE SALES AGREEMENT SHOULD BE INCLUDED UNDER FREIGHT CONTRACT; WE, OF COURSE, HAVE TAKEN THE OPPOSITE POSITION. PRELIMINARY REACTIONS OF MINPECO TO DRAFT ORE SALES AGREEMENT INDICATE SERIOUS PROBLEMS WITH EXTENT OF PERIOD OVER WHICH ORE IS TO BE TAKEN AS WELL AS WITH FACT THAT PURCHASER HAS GREAT FLEXIBILITY WHILE SELLER HAS VERY LITTLE. EXCLUSIVE TERRITORY CONCEPT WILL ALSO BE A PROBLEM, AS WILL MANY OTHER MINOR DETAILS. (INTERESTINGLY ENOUGH, ARBITRATION CLAUSES IN BOTH CONTRACTS HAVE RECEIVED AT LEAST TENTATIVE ACCEPTANCE.)

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MINARY REACTIONS OF MINPECO TO DRAFT ORE SALES AGREEMENT INDICATE SERIOUS PROBLEMS WITH EXTENT OF PERIOD OVER WHICH ORE IS TO BE TAKEN AS WELL AS WITH FACT THAT PURCHASER HAS GREAT FLEXIBILITY WHILE SELLER HAS VERY LITTLE. EXCLUSIVE TERRITORY CONCEPT WILL ALSO BE A PROBLEM, AS WILL MANY OTHER MINOR DETAILS. (INTERESTINGLY ENOUGH, ARBITRATION CLAUSES IN BOTH CONTRACTS HAVE RECEIVED AT LEAST TENTATIVE ACCEPTANCE.)

4. WE EXPECT TO DISCUSS INTERGOVERNMENTAL AGREEMENT/ JOINT COMMUNIQUE MATTER AGAIN WITH COMMISSION THURSDAY MORNING, ALONG WITH ORE CONTRACT ISSUES (LATTER OF WHICH SHOULD BE ON THE TABLE BY END OF WEDNESDAY AFTER-NOON MEETING). IT IS EVIDENT THAT JOINT COMMUNIQUE IDEA IS GAINING POPULARITY WITHIN GOP, IN PART BECAUSE NO ONE WOULD HAVE TO SIGN IT\* ONCE THAT MEETING IS OVER, THERE WILL BE LITTLE THAT CAN BE DONE UNTIL THE BASIC ISSUES ARE RESOLVED. FOR EXAMPLE, IT IS IMPOSSIBLE TO DRAFT THE FREIGHT CONTRACT UNTIL WE KNOW HOW LONG THE TERM IS, AND WHETHER UP TO 3.1 MILLION TONS OF MARCONA PURCHASED ORE IS TO BE INCLUDED OR EXCLUDED.

5. UNDER THESE CIRCUMSTANCES, WE BELIEVE YOU SHOULD ARRIVE IN LIMA LATE THURSDAY AS ORIGINALLY PLANNED. WE WOULD PLAN TO HAVE YOU MEET WITH THE MINISTERIAL GROUP FRIDAY AFTER-NOON TO RESOLVE THE MAJOR OUTSTANDING ISSUES. ONCE THIS HAS OCCURRED, THE CONTRACTS AND INTERGOVERNMENTAL AGREEMENT (OR COMMUNIQUE) COULD BE REDRAFTED OVER THE WEEKEND AND MONDAY, PAVING THE WAY FOR COUNCIL OF MINISTERS APPROVAL OF THE PACKAGE LATE MONDAY OR TUESDAY.

6. EINAUDI RAISED FISHLOW PRESENCE ISSUE WITH DE LA PUENTE. DE LA PUENTE REACTED VERY POSITIVELY, INDICATING GOP WOULD WELCOME FISHLOW'S PRESENCE IN LIMA, ADDING THAT TO HAVE PRESENT A PERSON WHO HAD CONTRIBUTED SO MUCH TO REACHING A SETTLEMENT WOULD BE A "BEAUTIFUL GESTURE."  
DEAN

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## Message Attributes

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**Concepts:** NATIONALIZATION, COMPENSATION, AGREEMENTS, REPORTS, NEGOTIATIONS, INTERGOVERNMENTAL COOPERATION  
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**Disposition Approved on Date:**  
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**Review Authority:** CunninFX  
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**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <19 MAY 2004 by ShawDG>; APPROVED <15 SEP 2004 by CunninFX>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
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**Status:** NATIVE  
**Subject:** MARCONA  
**TAGS:** EIND, EINV, EMIN, PFOR, PE, MARCONA  
**To:** USUN NEW YORK STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006